United States Court of Appeals

for the Second Circuit

SUPPLEMENTAL APPENDIX

77-7105

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

B

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

Docket No.
77-7105

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

P/S

AMERICAN BASKETBALL ASSOCIATION, et al.,

Cross-Claimants,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Cross-Defendants-Appellees.

R.T. ECKLES, Trustee in Bankruptcy for Mountain States Sports, Inc. d/b/a Utah Stars,

Cross-Claimant-Appellant,

-against-

FREDERICK P. FURTH,

Appellee,

AMERICAN BASKETBALL ASSOCIATION, LONG ISLAND SPORTS, DENVER NUGGETS, INC., SPURS PROFESSIONAL BASKETBALL CLUB, LTD. and INDIANA PACERS, L.P.,

Intervenor-Appellees.

INTERVENOR-APPELLEES' SUPPLEMENT TO APPENDIX

SPENGLER CARLSON GUBAR CHURCHILL
& BRODSKY
Attorneys for Intervenor-Appellees
280 Park Avenue
New York, New York 10022

PAGINATION AS IN ORIGINAL COPY

CONTENTS

Exhibit A	Docket Entries in American Basketball Association, et al. vs. National Basketball Association, et al. (Civil No. 51055 AJZ), United States District Court for the Northern District of California ("ABA's 1969 California action").
Exhibit B	Docket Entries in American Basketball Association, et al. v. National Basketball Association, et al. (No. C-74-0232 RFP), United States District Court for the Northern District of California ("ABA's 1974 California action").
Exhibit C	Affidavit of Frederick P. Furth, dated and sworn to November 18, 1976, filed in ABA's 1969 California action (together with Exhibit A thereto).
Exhibit D	Memorandum of Furth, Fahrner & Wong and Frederick P. Furth in Response to Memorandum Dated November 9, 1976 Submitted by R. T. Eckles, San Diego Professional Basketball Corporation and New Orleans Buccaneers, Inc., dated November 18, 1976, filed in ABA's 1969 California action.
Exhibit E	Consent Order Granting Preliminary Injunction and Permitting Amendment of Pleading, dated March 21, 1974, filed in this action on March 22, 1974 (Document #65 in Record on Appeal).

Assigned to Judge Zirpoli for all purposes. EXH. A

CIVIL DOCKET

UNITED STATES DISTRICT COURT

AJZ 51055

Jury demand date: Apr. 23, 69
Deft & cross-compl.(Lemat Corp.)

D. C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
AMERICAN BASKETBALL ASSOCIATION; ATHLETIC ENTERPRISES, INC. et al vs NATIONAL BASKETBALL ASSOCIATION; BALTIMORE BULLETS BASKETBALL CLUB et al	For plaintiff: ~~Law Offices of Frederick P. Furth, 235 Montgomery St., SF & Sommer, Tinkham, Barnard & Freiberger, 815 Merchants Bank Bldg., Indianapolis, Indiana~~ for ABA: FURTH, FAHRNER & WONG 235 Montgomery St., #1330 SF 94104 415-433-2070 and SPENGLER, CARLSON, et al. 280 Park Ave., NY, NY 10017 212-682-4444 All defendants except Lemat: For defendant: ~~Morrison, Foerster, Holloway Clinton & Clark, Crocker Plaza, S.F. & [Boston Celtics B.Club~~ Proskauer, Rose, Goetz & Mendelsohn 300 Park Avenue, New York, NY. 10022 ~~(Defts: Nat. Basketball Assoc. et al)~~ 212-593-9000 ~~Calif. Sports Inc.~~ Bancroft, Avery & McAlister, 240 Stocketon St., SF (Deft: Lemat Corp.) SULLIVAN, JONES & ARCHER 130 Sutter St., SF 94104 415-397-7667

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed 3-28-69	Clerk		3-28-69	66605	15 00	
			APR 1	1969 D1-76		15 00
J.S. 6 mailed AUG 31 1971	Marshal					
Basis of Action: Antitrust, Clayton Act, 15USC15	Docket fee					
	Witness fees					
Action arose at:	Depositions					

51055 AMERICAN BASKETBALL ASSN et al vs NATIONAL BASKETBALL ASSN. et al

JRURY TRIAL DEMANDED

DATE 1969	PROCEEDINGS	Date Order or Judgment Noted
Mar. 28	1. Filed complaint, issued 17 Dupl. Orig. summons. (Copy toMultiDist) (Issued Original Summons and 17 Dup. Orig. Summons)	
28	2. Filed ord. for sv. by private process, of complaint andsummons.	(Clerk)
Apr. 16	3. Filed pltfs. notice of motion and motion for assignment to a single judge with supporting papers attached and order shortening time to serve, to be heard Apr. 29, 69,2:00 PM,L&M.	(Zirpoli)
16	4. Filed defts. notice of taking depos. of various persons	
17	5. Filed pltfs. cert. of sv. by mail of ord. shortening time,etc.	
17	6. Filed defts. answer and counterclaim.	
18	7. Filed deft. Lemat Corp. answer and counterclaims.	
21	8. Filed deft. Calif. Sports Inc. answer and counterclaim	
23	9. Filed pltfs. lst notice of taking depos. (See document)	
23	10. Filed deft. Lemat Corp. demand for jury trial.	
23	11. Filed answer & counterclaim of Boston Celtics BasketballClub.	
24	12. Filed answer, defense and counterclaim of deft. Atlanta Hawks Basketball Inc.	
24	13 Filed stip. cont. depos. noted for Apr. 28 by deft. and Apr. 30,69 by pltf. are postponed one week .	
25	14 Filed ord. shortening time for sv. of motion by plffs. for prod. of documents set for hrg. May 6, 69.	
25	15 Filed ord. shortening time for sv. of mo. to vacate notice of taking depos.	(Zirpoli)
25	16 Filed defts. noticeof motion and motion by certain defts. to vacate notice of taking depos. with supporting papers attached, May 6,69,10AM, L&M.	
28	17 Filed interrogs. by pltffs. to deft. Atlanta Hawks Basketball, Inc.	
28	18 Filed notice & Motion by pltffs. for prod. &inspect., May 19, 1969, 10 A.M., with supporting papers attached.	
28	19 Filed amended notice of motion for prod. &inspect., May 6, 1969, 10:00 A.M. (Tuesday) before L & M Cal., with copy of order shortening time attached. (Zirpoli)	
29	Ord., aft. hrg., mo. to assign to one judge, submitted. (Zirpoli)	
29	20. Filed dup. orig. summons as to Atlanta Hawks on ret., executed.	
29	Issued Alias Summons.	
29	21. Filed defts. RIKO ENTERPRISES ANSWER & counterclaim	

See Sheet "B"

AMERICAN BASKETBALL et al vs NATIONAL BASKETBALL et al AJZ 51055 "B"

D. C. 110 Rev. Civil Docket Continuation

DATE 1969	PROCEEDINGS	Date Order or Judgment Noted
Apr. 30	22. Filed pltfs first set of interrogs.	
May 2	23 Filed order assigning cause to Hon. Alfonso J.Zirpoli for all purposes. (Harris(consented: Zirpoli)	
2	24 Filed memo by certain defts. opposing pltffs' mo. for production of documents.	
5	25. Filed defts. suppl. memo of pts. & auths. in support of mot. to vacate not. to take depos. & affidavit of Jacob Imberman.	
5	Ord., aft. hrg., the proceedings stayed and case cont'd. to May 26, 1969 for pre-trial conf.; on mo. of Frederick Furth, William Bernard was admitted for this case; on mo. of Richard J. Archer, Jacob Imperman and Larry M. Lavinsky were admitted for this case. (Zirpoli)	
9	26. Filed Order Staying All Discovery & that pretrial be set for hrg. on 5/26/69, etc.,	
	27. Filed Joinder by deft Lemat Corp. of Certain Defts' Mo. in Opp. to Plntf's. Mo. for Prod., etc.	
	28. Filed Second Notice of Taking Deposition (Samuel Gilbert, etc)	
13	29-46. Filed summons on ret, exec. as to: Cincinnati Bsketball Club, Chicago Prof.Basketball Corp., Detroit Pistons , Milwaukee Prof. sport & Svcs., New York Knickerbockers, Phoenix Suns, Riko Enterprises, San Diego Rockets, Lemat Corp., Seattle Superconics, Calif. Sports, Inc., Boston Celtics, Baltimore Bullets, Atlanta Hawks & National Basketball Assn.	
23	47. Filed alias summons on ret, unexec. as to Atlanta Hawks.	
27	ORD aft hrg, pre-trial cond. contd. June 19, 69, 10AM. (Zirpoli)	
29	48. Filed STIP & ORD cont. pre-trial hrg to June 19,69,10AM (Zirpoli)	
June 6	49. Filed reporters transcript of May 6, 1969.	
19	ORD aft hrg, cont. to Sept.2 for hrg objs &fur.pre-trail setOct14(Zirpol	
19	50. Filed defts proposed pre-trial ord. No. 1.	
30	51. Filed ans. of Atlanta Hawks Basketball Inc. to interrogs. of pltfs. dated Apr. 24, 69.	
30	52. Filed defts, interrogs. to pltfs. 1st set.	
Jul 2	53. Filed defts. PT Ord. No. 1 (Zirpoli)	
7	54. Filed deft. Leman Corp. interrogs. to pltfs. 1st set.	
17	55. Issued sumons on counterclaim.	
18	55. Filed pltfs. notice of taking depos. of Samuel Gilbert.	
23	56. Filed ord. allowing amendement to caption (Zirpoli)	
23	57. Filed pltfs. amendment to Caption.	

51055
B

DATE 1969	PROCEEDINGS	Date Order or Judgment Noted
Jul. 24	58. Filed ord. for sv. of summons outside state. (Zirpoli)	
29	Issued summons to Atlanta Hawks Basketball .	
31	59. Filed brief of Atlanta Hawks in support of its objs to svc of process.	
Aug. 5	60. Filed pltfs ANS to 1st counterclaim of defts.	
5	61. Filed depos. subpoena exec as to Ralph Shapiro, July 22,69.	
5	62. Filed depos. subpoena exec as to Samuel Gilbert, July 22,69.	
14	63 Filed stip & order re pre trial order no. 1, modifying dates for production of documents to 1 day after being served with written notice etc the dates the parties are to answer or object to interrogs is changed from Aug. 25, 1969 to Sept 25, 1969 Zirpoli	
20	64 Filed summons, exec. Aug. 13,1969, as to The Atlanta Hawks Basketball, Inc., a Georgia Corp.	
Sept. 2	ORD aft hrg, mots to compel ans to interrogs & prod. of documents granted. (Zirpoli)	
Sept. 2	65. Filed notice of mo & mo compel ans to questions under rule 37, Sept. 2,69, 10AM, L&M.	
Sept. 2	66. Filed affidavit of Jacob Imberman & memo of law in oppos. to pltfs mo under rule 34.	
Sept. 4	67. Filed pltfs notice of taking depos of John Dromo.	
Sept. 4	68. Filed pltfs notice of taking depos of Arthur W. Grafton.	
Sept. 12	69. Filed STIP & ORD ex time to Sept. 30,69 to counterdefts to ans 2nd Counterclaim of deft SF Warriors. (Wollenberg)	
Sept.16	70. Filed STIP & ORD changing date of depos. of Samuel Gilbert to Sept. 18,69. (Wollenberg)	
Sept. 25	71. Filed STIP & ORD ex time to deft to Oct.9,69 to ans pltfs 1st set of interrogs.	
Oct. 3	72. Filed defts notice of mo & mo for fur. protective ord re production of documents, 10-14-69.	
3	Lodged protective ord re production of documents.	
3	73. Filed notice of mo & mo by defts for protective ord re prospective witnesses, 10-14-69.	
3	Lodged protective ord re prospective witnesses.	
Oct. 7	74. Deft Lemat Corp joins in & adopts Notice of Mo & Mo for Prot. Ord.	
Oct. 9	75. Filed defts notice of mo to produce under Rule 34. (un-noticed).	
	See Sheet C	

D. C. 110 Rev. Civil Docket Continuation

DATE 1969	PROCEEDINGS	Date Order or Judgment Noted
Oct. 10	76. Filed ANS of deft Lemat Corp to pltfs 1st set of interrogs.	
Oct. 13	77. Filed STIP & ORD ex time to 10-20-69to pltfs & defts to ans 1st set of interrogs. (Zirpoli)	
Oct. 14	ORD aft hrg, motions for prot. ord granted in accordance with orders to be filed & pre-trial ord #2 approved. (Zirpoli)	
Oct. 14	78. Filed pltfs memo in response to defts mo for fur prot. ord re production of documents.	
14	79. Filed pltfs memo in response to defts mo for prot. ord. re prospective witnesses.	
14	80. Filed PRE-TRIAL ORDER #2. (Zirpoli)	
14	81. Filed defts notice of taking depos of George L. Mikan.	
Oct. 20	82. Filed STIP & ORD that counterdefts Bruce Hale & Kenneth Davidson to have to 10-30-69 to ans 2nd counterclaim of deft SF Warriors (Zirpoli)	
Oct. 20	83. Filed STIP & ORD re inspection of books & records of SF Warriors & Lemat Corp. (Zirpoli)	
Oct. 21	84. Filed STIP & ORD ex time to 11-3-69 to pltfs & defts to ans 1st set of interrogs. (Zirpoli)	
Oct. 27	85. Filed deftsnotice of taking depos of Pro Sports, Inc by Steven R. Arnold.	
Oct. 27	86. Filed defts notice of taking depos of Pro Sports, Inc. by Martin E. Blackman.	
Oct. 27	87. Filed depos. of Dr. Thomas F. Carney.	
Nov. 7	88. Filed STIP & ORD ex time to 11-30-69 to counterdefts Bruce Hale & Kenneth Davidson to ans 2nd counterclaim of deft SF Warriors (Zirpoli)	
Nov. 12	89. Filed affidavits of Fred. Furth & Thomas J. Gundlach pursuant to ord of this court re defts mo for a fur. protective ord re prod. of documents.	
Nov. 13	90. Filed summons on counterclaims, exec.	
Nov. 17	91. Filed defts affidavit of Franklin Mieuli.	
Nov. 17	92. Filed defts affidavit of Luther J. Avery.	
Dec. 8	93. Filed ANS by S. Kenneth Davidson, Charles E. Boone & Wm. Bruce Hale to 2nd counterclaim of deft Lemat Corp.	
Dec. 11	94. Filed STIP pre-trial ord. #3. (Zirpoli)	
Dec. 15	95. Filed affidavits by defts in response to pretrial ord #3, para. 9.	
Dec. 15	96. Filed affidavits of Wm. C. Barnard & Richard P. Tinkham, Jr., pur. to ord of Court re defts mo for fur. prot. ord re prod of documents.	
Dec. 18	97. Filed ANS of deft Seattle Supersonics Corp.	
18	98. Filed ANS of deft Phoenix Professional Basketball Club.	

DATE 1969	PROCEEDINGS	Date Order or Judgment Noted
Dec. 18	99. Filed ANS of deft Chicago Professional Basketball Corp.	
18	100. Filed ANS of deft San Diego Basketball Club.	
18	101. Filed ANS of deft Riko Enterprises.	
18	102. Filed ANS of deft Madison Square Garden Center.	
18	103. Filed ANS of deft Lemat Corp.	
18	104. Filed ANS of deft National Basketball Assoc.	
18	105. Filed ANS of deft Milwaukee Professional Sports & Services.	
18	106. Filed ANS of deft Calif. Sports Inc.	
18	107. Filed ANS of deft Detroit Pistons Basketball Club.	
18	108. Filed ANS of deft Cincinnati Basketball Club.	
18	109. Filed ANS of deft Baltimore Bullets Basketball Club.	
Dec. 18	110. Filed ANS of deft Atlanta Hawks Basketball.	
Dec. 22	111. Filed notarization of Ans of Seattle Supersonics to interrogs.	
Dec. 30	112. Filed affidavit of John J. Waldron.	
1970		
Jan 7	113 Filed by defts. (except Lemat Corp.) motion, affidavit of Melvin R. Goldman & order shortening time to Jan. 14,1970, 1:30 P.M. for hrg mo. for protective order re discovery, etc. (Zirpoli)	
7	114 Filed notice & Motion by defts. (other than Lemat Corp.) for proteceive order re discovery, Jan. 14, 1970, 1:30 P.M.	
7	115 Filed memo by defts. (other than Lemat Corp.) supporting mo. for protective order.	
7	116 Filed affidavit of Melvin R.Goldman supporting defts' mo. for protective order.	
7	117 Filed affidavit of Harvey K. Buchbinder supporting defts' mo. for protective order.	
Jan. 9	118. Filed defts interrogs to pltfs except American Basketball Assn, 2nd Set.	
Jan. 12	119. Filed STIP & ORD cont hrg on pltfs mo for protective ord to 1-15-70,1:30PM. (Zirpoli)	
Jan. 15	ORD aft hrg, mo for protective ord as specified by Court Granted; cont to 2-5-70,1:30PM for fur. hrg on mo for prot. ord. (Zirpoli)	
Jan. 16	120. Filed pltfs memo in oppos to defts mo for protective ord re discovery.	
Jan. 23	121. Filed pltfs interrogs to defts except Natl. Basketball Assn, 2nd Set.	
Jan. 28	122. Filed STIP ex time to 2-27-70 to pltfs to ans defts 2nd set of interrogs.	
Jan. 30	123. Filed reporter's transcript, 1-15-70.	

See Sheet D

D. C. 110 Rev. Civil Docket Continuation

DATE 1970	PROCEEDINGS	Date Order or Judgment Noted
Feb. 3	124. Filed pltfs memo in oppos to defts mo for protective ord re discovery. (Lodged 1-15-70) (IN CAMERA)	
3	125. Filed pltfs ANS to defts interrogs by pltf James J. Kirst, dba Los Angeles Star. (IN CAMERA)	
3	126. Filed pltfs ANS to defts interrogs by Dallas Prof. Basketball (IN CAMERA	
3	127. Filed pltfs ANS to deft interrogs by Long Island Sports Enter. (INCaMERA	
3	128. Filed pltfs ANS To defts Interrogs by Indiana Prof. Sports (IN CAMERA)	
3	129. Filed pltfs ANS to defts Interrogs by Florida Prof. Sports (IN CAMERA)	
3	130. Filed pltfs ANS to defts interrogs by Southern Sports Corp) IN CAMERA)	
3	131. Filed pltfs ANS to defts interrogs by Denver Rockets (IN CAMERA)	
3	132. Filed pltfs ANS to defts interrogs by New Orleans Buccaneers (IN CAMERA)	
3	133. Filed pltfs ANS to defts interrogs by Athletic Enterprises (IN CAMERA)	
3	134. Filed pltfs ANS to deft interrogs by American BasketballAssn (IN CAMERA)	
3	135. Filed pltfs ANS to defts interrogs by Oakland Basketball (IN CAMERA)	
3	136. Filed pltfs SUPPL. ANS to defts interrogs by Indiana Professional Sports. (IN CAMERA)	
Feb. 3	137. Filed pltfs cert of svc of ans to interrogs.	
Feb. 3	138. Filed defts fur. protective ord re discovery (Prop osed) (Unsigned)	
Feb. 3	139. Filed defts suppl. memo of pltfs in oppos to defts mo for a protective ord re discovery (Lodged w/Court 1-15-70)	
Feb. 5	ORD pre-trial conf contd to 2-19-70, 1:30PM	(Zirpoli)
Feb. 9	140. Filed pltfs affidavits re "Auerbach 1" pursuant to ord of court re defts mo for fur. protecting ord re prod. of documents.	
Feb. 10	141. Filed STIP & ORD ex time to 3-10-70 to defts to ans pltfs 2nd set of interrogs.	(Zirpoli)
Feb. 12	142. Filed STIP & ORD ex time to 3-10-70 to defts to ans pltfs 2nd interrogs.	(Zirpoli)
Feb. 19	PRE-TRIAL; contd to 2-26-70, 1:30PM for pre-trial.	(Zirpoli)
Feb. 26	ORD pre-trial contd to 3-5-70, 1:30PM.	(Zirpoli)
Mar. 5	ORD pre-trial contdto 3-12-70, 1:30PM.	(Zirpoli)
Mar. 10	143. Filed STIP & ORD that all proceedings staye for 30 days from 2-18-70; pre-trial conf adjourned to a date to be set by Court at least 30 days from 2-18-70.	(Zirpoli)
Mar. 18	144. Filed defts PRE-TRIAL ORD. NO. 4.	
Mar.27	145. Filed Stip. & Ord. staying proceddings until Apr.7-70 at 4:00pm for pre-trial conf. & that Ord Dated Mar.6-70 shall remain in force	(Zirpoli)
April 6	146. Filed depos of George L. Mikan.	
6	147. Filed depos of James John Kirst.	
April 6	148. Filed depos of Alex Hannum.	
Apr.13	149. Filed Notice of change of Address of Simpson, Thacher & Bartlett 120 Broadway, NY City, NY	

51055
"D"

DATE	PROCEEDINGS	Date Order or Judgment Noted
1971		
FEB 10	150. Filed reporter's transcript dated 4/29/69	
24	151. Filed reporter's transcript dated 6/19/69	
Aug. 16	152. Filed ORD of DISMISSAL of action w/prej, ea pty to bear own cost (Zirpoli)	
Sept. 3	153. Filed ORD of DISMISSAL of action w/prej. ea pty to bear own cost(AJZ)	
Dec. 9	154. Filed ORD of DISMISSAL of action as to certain defts w/prej. (AJZ)	
1972		
July 17	155. Filed c.c. of ORD entered by Judicial Panel: "An Order denying transfer shall be filed in each District wherein there is a case pending in which the motion for transfer has been made."	
Dec 8	156 Filed notice of taking deposition of ~~H~~ S.kenneth Davidson.	
~~XXXX~~		
1973	157. Filed Pltf's not of tak'g depos of William Eilers.	
Feb 14	158. Filed ~~XXXXXXX~~ Deft's not of tak'g depos of William Eilers.	
Mar 16	159. Filed Depos subp on ret unexec.	
Mar 28	160. Filed not of TAKG Depos. obo- Deft	
	161. Filed not of Tank Deps. obo Deft	
May 9	162. Filed Deft. Lemat Corp. No. of Taking Depos. of Custodian of Records Northwestern Natl. Bankof Minn. 5/31/73 9 AM...Farmers & Mechanics Savings Bank of Minn on 5/31/73 10 AM	
May 21	163. Filed Depo. of Wm. H. Eilers Volume 1	
	164. Filed Cont. Depo. of Wm. H. Eilers, Volume II	
	165. Filed Deposition of Wm. H. Eilers Exhibits 1 thru 107	
July 19	166. Filed Depo. of George Mikan	
	167. Filed Depo. of William J. Erickson	
July 20	168. Filed Depo. of George Newell	
July 25	169. Filed Depo. of Thurlo E. McCrady, taken 5/2/73	
	170. Filed Depo. of Roy L. M. Boe, taken 5/2/73	
Aug. 27	171. Filed Depo. of Louis M. Meisinger with Exhibits 1 thru 7.	
1976		
Aug 16	172. Affidavit of Frederick P. Furth.	
	173. Order for issuance of Notice of hearing. -AJZ	
	174. Notice of Hearing to determine whether action should be dismissed with prejudice: 9/17/76 @ 1:30pm.	
Aug 30	175. Plaintiff's notice of Motion and Motion for for determination with respect to named plaintiffs - 9/17/76 @ 1:30pm.	
	176. Affidavit of David A. DeBusschere.	

SEE SHEET "C"

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. C-51055-AJZ
AMERICAN BASKETBALL ASSN	NATIONAL BASKETBALL ASSN.	PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
1976		
Aug 31	177	Stipulation and Order allowing Exhibits to Affidavit of David A. DeBusschere to be filed under seal. AJZ
Sep 3	178	~~Stip & Order~~ Exhibits to Affidavit of David A. DeBusschere filed Under Seal.
Sept. 7	179.	Defendants (except Lemant) notice of motion & motion for dismissal 9-17-76 @ 1:30 pm Memo Order
Sept. 9	180.	Memo on behalf of New Orleans Buccaneers, Inc.
	181.	Defendant Lemat Corp.'s joinder in motion
Sept. 9	182	Motion & Order for special permission to appear (J E. Friend & D. S. Draper) as counsel of record. Received order
Sept.15	183	Plaintiff's affidavit of D. S. Mason.
Sept. 17	184	Plaintiff's affidavit of service of purchase agreement.
17	185	Reply affidavit of all defendants except Lemat Corp.
17	186	Affidavit of all defendants exc ept Lemat Corp.
17	187	Plaintiff's index to Debusschere affidavit.
Sept17	188	Plaintiff's affidavit of service of affidavit & notice of motion.
Sept.17		Received order of dismissal of action.
Sept.17	189	MINUTE ORDER,case dismissed as to all plaintiffs except Minnesota Pipers, J. Kirst & New Orleans Buccaneers; all NDB counter-claims dismissed except as to Lemat Corp; continued to 11-11-76,1:30 for pretrial & further hearing on motions to dismiss. AJZ
Sept. 21	190	Affidavit of service by all defendants except Lemat of reply affidavits.
Sept.21	191	ORDER of DISMISSAL with prejudice as to following plaintiffs each party to bear own costs: (See order for plaintiffs dismissed); pretrial status conference 11-11-76,1:30 etc. AJZ
Sept.29	192	Notice of entry of final judgment dismissing complaints of certain plaintiffs & counterclaims of all counterclaimants other than Lemat Corp.
Sept.29	193	Plaintiffs' certificate of service of order & letter.
Sept.30	194	Plaintiffs' certificate of service of notice of entry of final judgment etc.

OVER

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. _____
ABA	NBA	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
~~1976~~		
Oct 20	195	ABA's counsel's notice of appearance
	196	Plaintiff ABA's noitce, motion to dismiss Lemat's counter-claim, (no date set) Affidavit - D. Mason Memo in support (proposed order received)
	197	All defendants except Lemat's supplemental memo in support of motion to dismiss.
	198	All defendants except Lemat's noticew, motion to dismiss complaint of plaintiff New Orleans, Minnesota, and J. Kirst dba LA Stars, 11/11/76 @1:30pm. Affidavit- M. Cardozo. Exhibitds A through K.
21	199	Defendant Lemat's joinder in motion to dismiss complaint.
s	200	Plaintiff ABA's notice of return date. (on ~~defendant Lemat~~' their motion to dismiss defendant Lemat's counterclaim)
Nov 1	201	Plaintiff ABA's notice, motion to dismiss Lemat's counter-claim, 11/22/76 @1:30pm.
4	202	ORDER on stipulation: hearing of 11/11 reset to 11/22 @1:30pm. -AJZ
5	203	Proof of service of #202.
11	204	Defendant Lemat's memo opposing motion to dismiss.its counter-claim, ~~xxxdefendant~~.
*9	205	Certain plaintiffs' memo opposing defendants' motion to dismiss.
18	206	Plaintiff ABA's memo in response to memo dated 11/9 submitted by Eckles, San Diego Professional, and Buccaneers.
	207	Affidavit in support of ABA's motion to dismiss Lemat's counterclaim - D. Mason.
	208	Affidavit in response to Eckles etc's memo of 11/9 - F. Furth.
	209	Plaintiff ABA's memo in suport of motion to dismiss Le 's counterclaijm.
19	210	Affidavit in support of plaintiff's motion to dismiss Lemat's counterclaim - R. Carlson.
	211	Affidavit on behalf of San Diego Professional opposing motion to dismiss - L. Bloom.
22	212	Defendants except Lemant's 2d supplemental memo in support of motion to dismiss ~~xxx~~.
29	213	MINUTES for 11/22: Defendant's motion to dismiss; cont'
d		to 1/9/77 @10am; counsel to submit order. -AJZ.
*22	214	Defendant's except Lemat's 2d supplemental affidavit re dismiss motion.

GO TO PAGE "F"

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. _____
ABA	NBA	PAGE ___ OF ___ PAGES

DATE	NR.	PROCEEDINGS
1976		
Dec 13	215.	Affidavit of Robert S. Carlson in response to memo plus Exhibit A
Dec.28	216	Eckles' et al's supplemental memo in opposition to motion to dismiss & order to show cause re dismissal. certificate of service .
	217	ORDER that Furth, Fahrner & Wong, Frederick P. Furth & Daniel S. Mason, & Sommer, Tinkham,Barnard & Freiberger & William C. Barnard are relieved as counsel for all plaintiffs and motions to dismiss the complaint & counterclaim are continued to 01/04/77 @10.-am.
	218.	Stipulation & ORDER for dismissal with prejudice as to the following plaintiffs & Counterdefendants as to the counterclaim of Lemat Corp.: ABA, Athletic Enterprises, Florida Professional, Indiana Professional, New York, Dallas Professional, Denver Rockets, Souther Sports, & Oakland Basketball. AJZ
1977		
Jan.4	219.	Plaintiff's reply memo.
	220.	Reply affidavit of Douglas S. Draper.
*		
Jan.6	221.	MINUTE ORDER - 01/04/77, Defendants motion to dismiss (Minnesota Pipers, L.A. Stars, New Orleans Bucaneers) granted without prejudice order signed. AJZ
*Jan.4	222.	ORDER & FINAL JUDGMENT that the complaint of Minnesota Pipers,Inc., James J. Kirst dba Los Angeles Stars, & New Orleans Buccaneers,Inc. is dismissed without prejudice as to all the defendants, each party to bear its own costs, the Counterclaims of all the defenda-ts are dismissed without prejudice as to the plaintiffs listed, each party to bear its own costs, ENTERED XXXXXXXX 01/06/77. AJZ

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
WILLIAM L. WHITTAKER
Clerk, U. S. District Court
Northern District of California
By _____ Deputy Clerk
Dated 4/12/77

DC-111A (Rev. 1/75)

EXH. B

R 23	DEMAND $	DEMAND OTHER	JUDGE NUMBER	YEAR	DOCKET NUMBER
		X	7108	74	0232 RFP

DEFENDANTS

AMERICAN BASKETBALL ASSOCIATION, a Delaware corporation; DENVER ROCKETS BASKETBALL, LTD., a general partnership; INDIANA PROFESSIONAL SPORTS, INC., an Indiana corporation; KENTUCKY COLONELS, LTD., a partnership; CHARLES O. FINLEY & COMPANY, INC., an Illinois corporation; MOUNTAIN STATES SPORTS, INC., a Utah corporation; THE MUNCHAK CORP., a Delaware corporation, dba CAROLINA COUGARS; PROFESSIONAL SPORTS, a partnership; SAN DIEGO PROFESSIONAL BASKETBALL CORPORATION, a California corporation; THE VIRGINIA SQUIRES BASKETBALL CLUB LIMITED PARTNERSHIP,

Plaintiffs,

vs.

NATIONAL BASKETBALL ASSOCIATION, a joint venture; CALIFORNIA SPORTS INCORPORATED, a California corporation; LEMAT CORPORATION, a Delaware corporation, the general partner of a limited partnership dba GOLDEN STATE WARRIORS; PRO BASKETBALL, INC., an Oregon corporation; SEATTLE SUPERSONICS CORPORATION, a Washington corporation; FIRST NORTHWEST INDUSTRIES OF AMERICA, INC., a Washington corporation; THE PHOENIX PROFESSIONAL BASKETBALL CLUB, a limited partnership; MILWAUKEE PROFESSIONAL SPORTS AND SERVICES, INC., a Wisconsin corporation; CHICAGO PROFESSIONAL BASKETBALL CORPORATION, an Illinois corporation; KINGS PRO BASKETBALL INC., a Missouri corporation; TRANS NATIONAL COMMUNICATIONS, INC., a Massachuseets corporation; MADISON SQUARE GARDEN CORP. AND MADISON SQUARE CENTER, INC., a Michigan corporation; RIKO ENTERPRISES, INC., a Pennsylvania corporation; BUFFALO BRAVES, INC., a New York corporation; DETROIT PISTONS BASKETBALL CLUB, a division of ZOLLNER CORPORATION, an Indiana corporation; CAPITAL BULLETS BASKETBALL CLUB, INC., a Maryland corporation; ATLANTA HAWKS BASKETBALL, INC., a Georgia corporation, TEXAS SPORTS INVESTMENTS, INC., a Texas corporation; CLEVELAND PROFESSIONAL BASKETBALL COMPANY, INC., an Ohio corporation,

Defendants.

OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	N/S	O	R	R 23	DEMAND $	DEMAND OTHER	JUDGE NUMBER	DOCKET YEAR	DOCKET NUMBER
3	74	232RFP	01	30	74	3	41	1				X	7108	74	0232 RFP

PLAINTIFFS

AMERICAN BASKETBALL ASSOCIATION
ET AL

DEFENDANTS

U.S.

ATTORNEYS

Law Offices of Frederick P. Furth
235 Montgomery Street
Russ Building - Suite 1330
San Francisco, Ca. 94104 PH:433-2070

CAUSE

Action for injunctive relief and damages under Sherman and Clayton Antitrust Acts.

4

30 1. Filed Complt., Antitrust, Breach of Contract & Fraud
No Proc.

7 2. ISSUED SUMMONS

13 3. Filed Pltfs. No. of Related Cases with C-51055 AJZ

28 4. Filed Defts. Natl. Basketball No. of Entry of Ord to
Show Cause & TRO, & Stip & Ord pertaining thereto

5 5. Filed Ret. on Summons exe, except as to Riko Ent., Inc.,
Detroit Pistons Basketball Club, Texas Sports Investments, Inc.
Cleveland Basketball Co., Trans Natl. Communications,

12 6. Filed Clerk's notice of call of the gen. civil list hrg. on
10/24/74 @10.-am.

15 7. Filed cert. of counsel for the Pltf. per L.R. 119

17 8. Filed cert. of counsel for deft. Natl Basketball Assoc.

24 Ord. cont. to 12/20/75 @2.-pm for 2nd. not. of call L/R 119 Woodruff

18 Ord. action is dismissed w/o prej. RFP

ECK
RE
WAS

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FILING FEES PAID		
DATE	RECEIPT NUMBER	C.D. NUMBER
1-30-74	#17406 #15.00	2-58

JURY DEMAND

☐ PLAIN. ☐ DEF.

DATE

STATISTICAL CARDS

CARD	DATE MAILED
JS-5	
JS-6	12/18/74

STATES DISTRICT COURT DOCKET

Revised June 1973

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
WILLIAM L. WHITTAKER
Clerk, U. S. District Court
Northern District of California
By Marilyn Hersh
Deputy Clerk
Dated 4-20-77

Rec'd 11/23/76 pl/m 11/16
Entered in Docket
Entered in Diary

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Telephone: (212) 682-4444

Attorneys for Counterdefendant
American Basketball Association

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMERICAN BASKETBALL ASSOCIATION, et al.,

Plaintiffs,

v.

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

No. 51055 AJZ

AFFIDAVIT OF FREDERICK P. FURTH

NATIONAL BASKETBALL ASSOCIATION, et al.,

Counterclaimants,

v.

AMERICAN BASKETBALL ASSOCIATION, et al.,

Counterdefendants.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

Frederick P. Furth, being duly sworn, deposes and says:

1. I am one of the attorneys for the American Basketball Association ("ABA") and make this Affidavit in

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response to the Memorandum submitted on November 9, 1976 by R. T. Eckles, Trustee in Bankruptcy for Mountain States Sports, Inc., San Diego Professional Basketball Corporation and New Orleans Buccaneers, Inc.

2. On March 29, 1969, in association with the Indianapolis, Indiana law firm of Sommer, Tinkham, Barnard & Frieberger, I filed this action (herein "ABA I").

3. My retention as counsel for the plaintiffs herein was pursuant to a document entitled "Employment Agreement", executed by and between the American Basketball Association, through its then Commissioner, George L. Miken, and Sommer, Tinkham, Barnard & Frieberger, through one of its partners, William C. Barnard.

4. The Employment Agreement, a copy of which is attached hereto as Exhibit A, defines my clients as "American Basketball Association and its members." I was retained as counsel pursuant to paragraph 7 of Exhibit A, providing for the association of "Associate Counsel."

5. ABA I was vigorously prosecuted during 1969-1970. In the spring of 1970, settlement negotiations between the American Basketball Association and its teams and the National Basketball Association and its teams resulted in the staying of this action by Order of this Court. Thereafter, on April 14, 1970, at a special meeting in New York City, the trustees of the American Basketball Association unanimously passed a resolution offering to dismiss this action "with prejudice", upon certain conditions. I was instructed by the ABA Commissioner's Office and the ABA Board of Trustees not to proceed with the litigation.

6. On May 7, 1971, the American Basketball Association and all of its then member franchises except Carolina,

**

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executed a "Merger Agreement" providing for the dismissal "with prejudice" of this action. Accordingly, at the direction of the ABA Commissioner's Office and its Board of Trustees, I duly secured the dismissal "with prejudice" of the American Basketball Association, Athletic Enterprises, Inc., Indiana Professional Sports, Inc., Denver Rockets and Dallas Professional Basketball Corporation from this action as against all the defendants herein except San Francisco Warriors, Atlanta Hawks Basketball, Inc., Riko Enterprises, Inc., and Milwaukee Professional Sports and Services, Inc. (herein NBA non-settling defendants).

7. Dismissals were not filed against the NBA non-settling defendants because these entities failed to file dismissal of their outstanding counterclaims against the plaintiffs herein.

8. Despite the fact that certain party litigants did not dismiss this action in 1971, the ABA Commissioner's Office and its Board of Trustees nevertheless instructed me to cease prosecution of this action. I was advised to the contrary by no one. Because I had undertaken my representation herein pursuant to Exhibit A, designating as my clients "The American Basketball Association and its members", I complied with the aforesaid request.

9. By its terms, the May 7, 1971 Agreement was to expire on January 4, 1974. On January 30, 1974, I filed another action in this Court on behalf of the American Basketball Association and its then member teams entitled American Basketball Association, et al., v. National Basketball Association, et al., C-74-0232 (FRP) (herein "ABA II"). In September, 1974, pursuant to stipulation, ABA parties herein filed cross-claims in that certain action styled Robertson v. National Basketball Association, et al., 70 Civ. 1526

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(RLC) pending in the United States District Court for the Southern District of New York. In December, 1974 was dismissed pursuant to stipulation of counsel.

10. In June, 1976, the Commissioner of the American Basketball Association and its Board of Trustees informed me that they had reached an agreement to compromise and settle the outstanding litigation in the Robertson action, as well as in this action. The American Basketball Association, through its Commissioner, Mr. David A. DeBusschere, instructed me to file a "with prejudice" dismissal of this action, which I have done.

11. Those entities which operated the American Basketball Association member teams in June, 1976, i.e., Denver, Indiana, San Antonio, New York, St. Louis and Kentucky, have instructed me that they have reached an agreement in principal to compromise and settle the outstanding litigation.

12. On September 17, 1976, this Court relieved me as counsel of record for all plaintiffs herein except for James J. Kirst, d/b/a/ Los Angeles Stars, New Orleans Buccaneers, Inc. and Minnesota Pipers, Inc. In response to my inquiry at the conclusion of the September 17, 1976 hearing, this Court informed me that I would have no responsibilities on behalf of these entities at the next pre-trial conference.

13. Neither I nor any member or associate of my firm participated in the negotiations leading to the settlement of the Robertson litigation by certain of my clients, to wit: American Basketball Association, Denver, Indiana, San Antonio, New York, St. Louis and Kentucky.*

---

* While I previously represented the Kentucky ABA franchise in this Court, no Kentucky franchise was a party in Robertson. I did not represent the New York ABA party in Robertson, but did represent a former New York ABA franchise in this Court.

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14. I am informed that the settlement included, inter alia, an agreement that four of my clients, Denver, Indiana, San Antonio and New York,* would become members of the National Basketball Association, commencing with the 1976-77 basketball playing season. I was further informed that these entities had agreed to indemnify the National Basketball Association defendants for any judgment which might be entered as a result of ABA entity claims asserted in either Robertson or this Court. I was further informed by counsel that Denver, Indiana, San Antonio and New York would, by virtue of the National Basketball Association joint venture agreement, be responsible for a proportionate share of the damages recovered by any ABA entity as a result of the prosecution of ABA claims in Robertson or this Court.

15. ABA, Denver, San Antonio, Indiana and New York have instructed me to file with prejudice dismissals of their claims in both Robertson and, to the extent possible, in this Court. This I have done.

16. On the other hand, R. T. Eckles, Trustee in Bankruptcy for Mountain States Sports, Inc., San Diego and New Orleans** have, I understand, requested me to proceed with prosecuting their Robertson claims, and their claims in ABA I, if any.

I have attached hereto as Exhibit B the complete transcript of the hearing conducted before Honorable Robert L. Carter, United States District Court for the Southern District of New York, on the Robertson litigation on September 8,

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* With respect to New York, see previous footnote.

** I am counsel of record in this Court for New Orleans, and in Robertson for Eckles and San Diego.

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1976.* At that hearing Judge Carter was presented with the fact of the creation of conflict vis-a-vis my continued representation of non-settling parties. In response to certain contentions advanced by Mr. Flournoy, counsel for San Diego Professional Basketball Corporation, Judge Carter stated:

> "THE COURT: What you are telling me, what the reality is, if the ABA and these other clubs settle and Mr. Furth is counsel, the probability is that he would not be able, having represented the ABA which has now settled, he probably would not be in a position to represent any contending club under any circumstances not in this court. If he were to attempt to represent I think there would be a motion made in regard to the conflict of interest so that problem is put aside, but it appears to me that your action, if you want to maintain it and pursue it, remains. (Transcript 19.) (Emphasis Added.)
>
> * * *
>
> "THE COURT: I think it would be very difficult in my judgment for Mr. Furth, having represented the ABA and the ABA having settled this litigation and being a party to the settlement and approving the settlement and so forth, I think Mr. Furth would be in a very difficult position without the indemnification to pursue this litigation on behalf of any member team. I think he would be.
>
> * * *

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* Judge Carter also conducted a hearing on September 7, 1976.

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TEL. (415) 433-2070

"THE COURT: I am saying to you that Mr. Furth having represented the ABA, which is the overall entity that has settled and wants out of the litigation, that without the indemnification I think Mr. Furth would have a difficult position to attempt to represent you and to continue this lawsuit.

"MR. FLOURNOY: I really believe that's incorrect, but I don't have the cases to point that out to you.

"THE COURT: In any event --

"MR. FLOURNOY: It's been my general experience, your Honor, sure some people can settle out, but the person charged with the litigation continues on for those plaintiffs who want to continue to litigate.

"THE COURT: The point is that the party that settled out, the main party that he represents is the ABA and he is representing these member clubs because they are a part of the ABA, but in any event let me just put it this way: I don't see any way, Mr. Flournoy, that I can find on the basis of our argument that I

**

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can indicate that this indemnification agreement is something that I would bar. I don't see how I can do that. There is no basis for me to do that.

(Transcript 24-25.)

DATED: November 18, 1976
San Francisco, California.

Respectfully submitted,

Frederick P. Furth

Sworn to before me this
18th day of November 1976.

Paula L. Cutland
Notary Public

PAULA L CUTLAND
NOTARY PUBLIC-CALIFORNIA
CITY AND COUNTY OF
SAN FRANCISCO
My Commission Expires July 9, 1977

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
WILLIAM L. WHITTAKER
Clerk, U. S. District Court
Northern District of California
By Marilyn Hetzel
Deputy Clerk
Dated 7-30-77

FURTH, FAIRNER & WONG
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EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into this 22nd day of May, 1969, by and between the AMERICAN BASKETBALL ASSOCIATION and its members (hereinafter referred to as the "Client") and SOMMER, TINKHAM, BARNARD & FREIBERGER (hereinafter referred to as the "Lawyers");

WITNESSETH:

WHEREAS, the Client, together with its members, are parties plaintiff in a certain action entitled "American Basketball Association, et al. vs. National Basketball Association, et al.", Civil Action No. 51055 in the United States District Court, Northern District of California (hereinafter referred to as the "Action"); and

WHEREAS, the Client on the 24th, 25th and 27th day of March, 1969, authorized the Lawyers to file the Action; and

WHEREAS, the Client wishes the Lawyers to continue the representation of the Client in the Action; and

WHEREAS, the Lawyers are willing to continue such representation;

NOW, THEREFORE, in consideration of the mutual promises and understandings herein contained, it is agreed as follows:

1. The Client shall pay the Lawyers at the rate of Forty Dollars ($40.00) per man hour for all time spent in representing the Client in the Action (hereinafter referred to as the "Basic Fee").

20 16406

BEST COPY AVAILABLE

Tinkham exhibit 33
9-30-75
ab

Confidential

EXHIBIT A

2. The Client shall further compensate the Lawyers for their services in the amount of thirty-three and one-third percent (33 1/3%) of all amounts recovered by the Client and its members (including attorneys' fees) in the Action (hereinafter referred to as the "Damage Fee"); provided, that Client's account shall be credited for all Basic Fee payments received by the Lawyers, and, except as provided in Paragraph 3 below, Client's obligations under this Paragraph shall be limited to the payment of the difference, if any, between the Damage Fee and the Basic Fee previously received by the Lawyers.

3. In the event a judgment is obtained by the Client or the Action is compromised, the Basic Fee shall be recomputed and paid on the basis of Sixty-five Dollars ($65.00) per man hour.

4. In the event a result is obtained in the Action which is satisfactory to the Client and no fee is paid to the Lawyers pursuant to Paragraph 2 above, an additional fee based upon such result shall be negotiated by the parties.

5. All necessary costs and expenses shall be borne by the Client.

6. The Lawyers shall invoice the Client for the Basic Fee on a bi-monthly basis and shall submit or invoice for costs and expenses on a monthly basis.

7. Associate Counsel may be employed at the discretion of the Lawyers upon the same terms as set forth in Paragraphs 1 and 3 above.

29 10487

8. The Lawyers shall keep the Client and any designees of Client fully informed as to all developments which occur during the course of the Action.

9. The Client shall cooperate in the preparation and trial of the Action, and shall appear on reasonable notice for depositions and court-appearances.

IN WITNESS WHEREOF, the undersigned have caused their signatures to be affixed as of the day and year first above written.

AMERICAN BASKETBALL ASSOCIATION

By _____
Commissioner

ATTEST: _____
Secretary

SOMMER, TINKHAM, BARNARD & FREIBERGER

By _____
Partner

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
WILLIAM L. WHITTAKER
Clerk, U. S. District Court
Northern District of California
By _____ Deputy Clerk
Dated _____

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
WILLIAM L. WHITTAKER
Clerk, U. S. District Court
Northern District of California
By _____ Deputy Clerk
Dated 4-20-77

29 16408

Served
Received 11/23/76 p/m
Entered in Docket
Entered in Diary For

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New York, New York 10017
Telephone: (212) 682-4444

Attorneys for Counterdefendant
American Basketball Association

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMERICAN BASKETBALL ASSOCIATION, et al.,

Plaintiffs,

v.

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

No. 51055 AJZ

NATIONAL BASKETBALL ASSOCIATION, et al.,

Counterclaimants,

v.

AMERICAN BASKETBALL ASSOCIATION, et al.,

Counterdefendants.

MEMORANDUM OF FURTH, FAHRNER & WONG AND FREDERICK P. FURTH IN RESPONSE TO MEMORANDUM DATED NOVEMBER 9, 1976 SUBMITTED BY R. T. ECKLES, SAN DIEGO PROFESSIONAL BASKETBALL CORPORATION AND NEW ORLEANS BUCCANEERS, INC.

I. INTRODUCTION.

This memorandum is submitted by Furth, Fahrner & Wong (hereinafter "FF&W") and Frederick P. Furth (hereinafter

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"Furth") in response to the Memorandum served November 9, 1976 by Richard T. Eckles, Trustee-in-Bankruptcy for Mountain States Sports, Inc., (hereinafter "Eckles"), San Diego Professional Basketball Corporation (hereinafter "San Diego"), and New Orleans Buccaneers, Inc. (hereinafter "New Orleans") (sometimes collectively referred to hereinafter as "moving entities"). While that Memorandum is purportedly submitted "in opposition to the Motion to Dismiss and Order to Show Cause Re Dismissal", the document also purports to seek an Order "declaring that the firm of FF&W is not disqualified from continuing to represent the remaining plaintiffs in this litigation and directing that they not be permitted to withdraw . . ." Memorandum 16.

II. THE FACTUAL CONTENTIONS ARE IMPROPERLY PRESENTED.

The Memorandum contains several and various purported statements of fact concerning FF&W and Furth and the American Basketball Association. Although FF&W and Furth will more fully review these contentions, infra, it must be initially noted the factual contentions of the moving entities have not been presented by affidavit, as required by Local Rule 115. As such, with respect to the "Motion" directed to FF&W and Furth, these entities have presented this Court with no facts supporting their contentions.

III. FURTH, FAHRNER & WONG AND FREDERICK P. FURTH ARE FACED WITH A CONFLICT.

Furth and the Law Offices of Frederick P. Furth (the predecessor of FF&W) filed this action, in association with the Indianapolis, Indiana law firm of Sommer, Tinkham, Barnard and Scopelitis in March, 1969. Furth's representation was pursuant to an "Employment Agreement" between William C. Barnard and the American Basketball Association, through its

then Commissioner, George L. Mikan, as distinct from any of its member teams or franchises. Furth Aff. ¶ 3. A true and correct copy of that Employment Agreement is attached as Exhibit A to the Affidavit of Frederick P. Furth. Furth was retained as counsel pursuant to paragraph 7 of the Employment Agreement, providing for association of "Associate Counsel."

After vigorous prosecution of this action during 1969-70, on April 17, 1970, as a result of previous settlement negotiations, the Trustees of the ABA unanimously passed a resolution offering to dismiss this action "with prejudice," upon certain conditions. Furth Affidavit, ¶ 4. Furth and his co-counsel, Barnard, were directed by the ABA Trustees and its Commissioner to discontinue prosecution of this action. Furth Affidavit, ¶ 5.

On May 7, 1971 a Merger Agreement was consummated between the ABA and all its then teams other than Carolina, with all NBA defendants other than Atlanta, Milwaukee, Philadelphia and San Francisco. Furth was instructed by the Commissioner of the ABA and its Board of Trustees to cease prosecution of this action. Furth Affidavit, ¶ 6-8.

The record herein further reflects that the May 7, 1971 Agreement referred to above expired by its own terms on January 4, 1974. Furth thereafter filed another action in this Court on behalf of the ABA and its then member teams entitled American Basketball Association, et al. v. National Basketball Association, et al., (74-0232 RFP (ABA II). Pursuant to Order and Stipulation of counsel, in September, 1974, Furth filed on behalf of the ABA and its member teams an Amended Cross-claim in the Robertson action, then pending in Judge Carter's Court in the United States District Court

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for the Southern District of New York. In December, 1974, ABA II was dismissed pursuant to stipulation of counsel.

In June, 1976, the then Commissioner of the ABA, David A. DeBusschere, instructed Furth to file a "with prejudice" dismissal of the ABA claims pending in both Robertson and in this Court. Furth was informed by the Commissioner that a settlement had been reached between the ABA and all of the teams then represented on the ABA Board of Trustees, to wit: Denver, Indiana, San Antonio, New Orleans, St. Louis and Kentucky. Furth Affidavit, ¶ 10.

In addition to the aforesaid instructions from the ABA, through its Commissioner, Furth also received instructions from certain other clients, to wit: Denver, Indiana, San Antonio and New York,* to discontinue prosecution of their claims asserted in Robertson and, by virtue of their being successors in interest to certain plaintiffs here, in this Court. And indeed, Denver, Indiana, San Antonio and New York have directed Furth to file with prejudice dismissals of their Robertson claims and, to the extent possible, claims they may have succeeded to in this Court.

These clients, through their local counsel, further informed Furth that, by virtue of the National Basketball Association's Joint Venture Agreement, they would be jointly and severally liable for any judgment which the NBA might have to respond to in either this Court, or in Judge Carter's court. See Affidavit of Robert S. Carlson, filed separately.

The record reflects a conflict of the clearest nature has been presented to FF&W and Furth. By their

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* Furth was counsel for the ABA New York franchise in this Court. However, Mr. Carlson was counsel of record for the ABA New York franchise in the Robertson litigation, with Furth serving as counsel for the remaining Robertson ABA parties.

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"motion", Eckles, Trustee in Bankruptcy for Mountain States Sports, Inc., New Orleans and San Diego seek to have this Court order FF&W and Furth to prosecute this action on their behalf against the NBA defendants, despite the fact that such a course of conduct is directly contrary to instruction by certain of Furth's former clients, and inimicable to their interests. By following the instructions of the moving entities, Furth would seek to recover a judgment on their behalf to which Denver, Indiana, San Antonio and New York will have to respond.

IV. THE RULES OF PROFESSIONAL BAR DICTATE THAT FURTH, FAHRNER & WONG AND FURTH NOT BE COMPELLED TO REPRESENT PLAINTIFFS HEREIN.

This Court, on September 17, 1976, relieved FF&W and Furth as counsel of all plaintiffs herein other than James J. Kirst, d/b/a Los Angeles Stars, New Orleans Buccaneers, Inc., and Minnesota Pipers, Inc.

Eckles has asserted before this Court that he has succeeded to plaintiff James J. Kirst d/b/a Los Angeles Stars' cause of action. San Diego Professional Sports, Inc. has asserted that it has succeeded to Minnesota Pipers, Inc.'s cause of action. Any determination with respect to the "motion" brought on by Eckles and San Diego must necessarily be preceeded by this Court's determination as to their standing herein. New Orleans, however, is an original plaintiff.

The applicable ethical and professional canons, statutes and case law absolutely preclude FF&W and Furth from pursuing and accepting the representation requested by the moving entities.

**

LAW OFFICES
FURTH, FAHRNER & WONG
RUSS BUILDING, SUITE 1330
SAN FRANCISCO, CA 94104
TEL. (415) 433-2070

Rule 5-102(B), Rules of Professional Conduct of the State Bar of California (effective Jan. 1, 1975), codified at § 6076 Cal. Business and Professions Code (1976 Supp.), states:

> "A member of the State Bar shall not represent conflicting interests except with the written consent of all parties concerned." (Emphasis added).

California case law has concurred. As noted in Ishmail v. Millington, 241 C.A.2d 520, 527 (fn. (1966),

> ". . . California courts have repeatedly held that counsel should terminate a relationship when the discharge of duty to one client conflicts with duty to another. Detramanti v. Lompoc Unified School Dist., 143 Cal. App. 2d 715, 723; Hammett v. McIntyre, 114 Cal. App. 2d 148, 153-154; McClure v. Donovan, 82 Cal. App. 2d 664, 666; Pennix v. Winton, 61 Cal. App. 2d 761, 773."

Indeed, the Supreme Court of California has ruled that "[an attorney] may not do anything which will injuriously affect his former client in any matter in which he formerly represented him . . . ." Wutchumna Water Co. v. Barley, 216 Cal. 569, 573-579.

Circuit Judge Morrow, sitting as a District Judge in this Court, has similarly stated:

> "It is the general and well-stated rule that an attorney [cannot] assume a position hostile to his clients, and one inimical to the very interests he was engaged to protect; and it makes no difference, in this respect, whether the relation itself has been

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terminated, for the obligation of fidelity and loyalty still continues . . . ." In Re Boone, 83 Fed. 944, 952 (N.D. Cal. 1894). See also, Sheffield v. State Bar, 22 C.2d 627, 631 (1943).

The federal case law is in total accord. The Court of Appeals for the District of Columbia has observed that "[t]he law is well settled that an attorney, having acted as such for a client, cannot thereafter assume a hostile position to him about the same manner . . . ." Brown v. Miller, 286 F. 994, 997 (D.C. Cir.). Similarly, the Court in Porter v. Huber, 68 F.Supp. 132, 135 (W.D. Wash. 1946), has ruled that "[i]t is both the right and duty of the Court to prohibit or restrain an attorney from acting for one whose interest is adervse to that of a former client."

It is beyond peradventure that, under the applicable authority, not only must the "Motion" of the moving entities be denied, but further, it is "the duty" of this Court in the words of Porter v. Huber, supra, to ensure that FF&W and Furth not render or continue representation where, as here, such representation is in conflict with the wishes and interests of former clients.

V. JUDGE CARTER HAS ALREADY RULED THAT THE SO-CALLED INDEMNIFICATION AGREEMENT IS ENTIRELY PROPER.

As noted above, the conflict presented FF&W and Furth herein stems from the nature of the NBA's Joint Venture Agreement. Eckles, New Orleans and San Diego argue, however, that the conflict here presented* stems from the "agreement of

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* And it should be noted that these entities nowhere deny the existence here of such a conflict vis-a-vis FF&W and Furth.

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the ABA teams to indemnify the NBA against further litigation or expense" Memorandum at p. 4. In point of fact, any indemnification agreement inuring to the NBA's benefit arising from the Robertson settlement only supplements the conflict created by virtue of the Joint Venture Agreement.

In the Robertson litigation, counsel for San Diego argued that said indemnification agreement should be set aside. Judge Carter refused, holding that the ABA settling parties had every legal right to consummate such an agreement. See Exhibit B to Affidavit of Frederick P. Furth.

At the September 8, 1976, hearing, Judge Carter, during a colloquy with Peter Flournoy, counsel for San Diego Professional Basketball Corporation, addressed himself to the Furth conflict problem:

> "THE COURT: What you are telling me, what the reality is, if the ABA and these other clubs settle and Mr. Furth is counsel, the probability is that he would not be able, having represented the ABA which has now settled, he probably would not be in a position to represent any contending club under any circumstances, not in this court. If he were to attempt to represent I think there would be a motion made in regard to the conflict of interest so that problem is put aside, but it appears to me that your action, if you want to maintain it and pursue it, remains. (Transcript 19.) (Emphasis added.)
>
> * * *
>
> "THE COURT: I think it would be very difficult in my judgment for Mr. Furth, having represented the ABA and the ABA having

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settled this litigation and being a party to the settlement and approving the settlement and so forth, I think Mr. Furth would be in a very difficult position without the indemnification to pursue this litigation on behalf of any member team. I think he would be.

* * *

"THE COURT: I am saying to you that Mr. Furth having represented the ABA, which is the overall entity that has settled and wants out of the litigation, that without the indemnification I think Mr. Furth would have a difficult position to attempt to represent you and to continue this lawsuit.

"MR. FLOURNOY: I really believe that's incorrect, but I don't have the cases to point that out to you.

"THE COURT: In any event --

"MR. FLOURNOY: It's been my general experience, your Honor, sure some people can settle out, but the person charged with the litigation continues on for those plaintiffs who want to continue to litigate.

"THE COURT: The point is that the party that settled out, the main party that he represents is the ABA and he is representing these member clubs because they are a part of the ABA, but in any event let me just put it this way: I don't see any way, Mr. Flournoy, that I can find on the basis of our argument that I can indicate that this indemnification agreement is something that I would bar. I don't see how I

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can do that. There is no basis for me to do that.

(Transcript 24-25.)

V. CONTROL DATA IS DISTINGUISHABLE.

The moving entities refer to the "Control Data/IBM litigation." Inasmuch as no citation is offered, we are somewhat disadvantaged with respect to responding thereto. What is clear, however, is that the records, files, documents and transcripts maintained by this office concerning both this and the Robertson litigation, remain, and will continue to remain, undisturbed and fully intact. FF&W will not dispose of these documents without the Court's approval.

At this Court's last pre-trial conference, on September 17, 1976, Mr. Furth expressly sought direction from this Court with respect to his responsibilities at this upcoming hearing. After having relieved FF&W and Furth as counsel to all plaintiffs other than Eckles, Trustee in Bankruptcy to Mountain States Sports, Inc., New Orleans, and San Diego, this Court expressly told FF&W and Furth that they would not be obliged to represent the three aforesaid entities. FF&W and Furth accordingly take strong exception to the Memorandum assertion that they have a continuing responsibility to oppose the NBA's motion to dismiss.

DATED: November 18, 1976
San Francisco, California.

Respectfully submitted,

FREDERICK P. FURTH
DANIEL S. MASON
FURTH, FAHRNER & WONG

ROBERT S. CARLSON
SPENGLER, CARLSON, GUBAR,
CHURCHILL & BRODSKY

By _____

Attorneys for Counterdefendant
American Basketball Association

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST:
WILLIAM L. WHITTAKER
Clerk, U. S. District Court
Northern District of California
By _____ Deputy Clerk
Dated 4-20-77

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PROOF OF SERVICE BY MAIL

I, Verne Cosney, certify and declare under penalty of perjury that I: am a citizen of the United States; am over the age of 18 years; am employed by Furth, Fahrner & Wong, at the address indicated, whose members are members of the State Bar of California and at least one of whose members is a member of the Bar of each Federal District Court within California; am not a party to or interested in the cause entitled upon the document to which this Proof of Service is affixed; and that I served a true and correct copy of the following document(s):

AFFIDAVIT OF DANIEL S. MASON

AFFIDAVIT OF FREDERICK P. FURTH

MEMORANDUM OF FURTH, FAHRNER & WONG

REPLY MEMORANDUM OF AMERICAN BASKETBALL ASSOCIATION

by today depositing, at San Francisco, California, the said document(s) in the United States Mail in a sealed envelope, with first-class postage thereon fully prepaid, addressed to:

Robert S. Carlson, Esq.
Spengler, Carlson, Gubar, Churchill
& Brodsky
280 Park Avenue
New York, New York 10017

Sommer, Barnard, Freiberger
& Scopelitis
815 Merchants Bank Building
Indianapolis, Indiana 46204

Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Stephen V. Bomse, Esq.
Heller, Ehrman, White & McAuliffe
44 Montgomery Street
San Francisco, California 94104
BY HAND

Peter Flournoy, Esq.
3681 Fifth Avenue
San Diego, California 92103

Richard J. Archer, Esq.
Sullivan, Jones & Archer
Hallidie Building
130 Sutter Street
San Francisco, California 94104

Robert L. Dunn, Esq.
Bancroft, Avery & McAlister
240 Stockton Street
San Francisco, California 94108
BY HAND

DATED: Nov 18 1976
San Francisco, California

Verne Cosney

EXHIBIT A

EXHIBIT

U.S. Dist. Ct. Filed Mar. 22, 1974 S.D.N.Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,	:	
Plaintiffs,	:	70 Civ. 1526 (RLC)
-against-	:	
NATIONAL BASKETBALL ASSOCIATION, et al.,	:	CONSENT ORDER GRANTING PRELIMINARY INJUNCTION AND PERMITTING AMENDMENT OF PLEADINGS
Defendants.	:	

Microfilm Dec. 31, 1974

All of the defendants in this action, with the exception of defendants American Basketball Association ("ABA"), Madison Square Garden Corporation and Madison Square Garden Center, Inc. (all of said moving defendants being hereinafter referred to as the "NBA defendants"), having moved for a temporary restraining order restraining the ABA, its member teams and persons acting on its behalf from prosecuting an action entitled American Basketball Association, et al., v. National Basketball Association, et al., No. C-74-0232 RFP, in the United States District Court for the Northern District of California ("the California Action"), and this Court, on February 15, 1974, after hearing the argument of counsel for all the parties, having granted the requested temporary restraining order, a copy of which is annexed hereto as Exhibit A; and

Said temporary restraining order, on February 26, 1974, having been extended to March 15, 1974 by stipulation and order, a copy of which is annexed hereto as Exhibit B, upon the same terms and conditions as the original temporary restraining order; and

The motion of the NBA defendants for a preliminary injunction to enjoin the defendant ABA, its member teams and persons acting on its behalf from prosecuting the California Action having come on to be heard before this Court, and the Court having heard the argument of counsel and good cause appearing, and upon the consents of Roth Carlson & Spengler, attorneys for defendant ABA, Proskauer Rose Goetz & Mendelsohn, attorneys for the NBA defendants, Simpson Thacher & Bartlett, attorneys for defendants Madison Square Garden Corporation and Madison Square Garden Center, Inc., and upon the consent of Weil, Gotshal & Manges, attorneys for plaintiffs, to paragraphs "1" and "5" below, it is ordered:

1. The defendant ABA, its member teams and their respective officers, agents, attorneys and all persons acting in concert with them be, and they hereby are, preliminarily enjoined from prosecuting the aforesaid California Action in the United States District Court of the Northern District of California, and the ABA, its member teams and their respective agents and attorneys hereby agree that, in view of the consented to nature of the preliminary injunction, no security therefor need be posted.

2. The bond of $5,000 previously posted by the NBA defendants with respect to the temporary restraining order referred to above is hereby released and discharged.

3. Plaintiffs, upon consent, have been given leave to file and cause to be served an amended complaint herein no later than April 3, 1974. The defendant ABA is hereby granted leave, over plaintiffs' objection, to serve and file an amended answer to said amended complaint which may contain counterclaims on behalf of the ABA and additional parties against plaintiffs and additional parties, and cross-claims on behalf of the ABA and additional parties against defendants and additional parties, without waiver

by any party of its or his defenses, if any, to the claims asserted in any such pleading by the ABA.

4. Upon service of the amended pleadings as provided in paragraph "3" and upon application of the NBA defendants, the California Action may be dismissed without prejudice to the rights, claims and causes of action of the defendant ABA and the named additional parties as set forth in said amended answer.

5. Plaintiffs' motion for an order pursuant to Rule 23 of the Federal Rules of Civil Procedure determining that this action may be maintained as a class action, which motion is now returnable on April 4, 1974, is held in abeyance without prejudice to modification upon completion of the service of amended pleadings as aforesaid and is adjourned to an agreeable date following service of such pleadings.

Dated: New York, New York
March 21, 1974

s/ Robert L. Carter
U.S.D.J.

CONSENTED TO:

ROTH CARLSON & SPENGLER

By Robert Carlson
Attorneys for defendant ABA and its member teams

PROSKAUER ROSE GOETZ & MENDELSOHN

By Michael A Cardozo
Attorneys for NBA Defendants

SIMPSON THACHER & BARTLETT

By Roy D. Reard -
Attorneys for defendants Madison Square Garden Corporation and Madison Square Garden Center, Inc.

CONSENTED TO AS TO PARAGRAPHS "1" and "5" ONLY:

WEIL, GOTSHAL & MANGES

By _____
Attorneys for Plaintiffs

OFFICE COPY

Served 2/15/74
Filed RB-SDNY-2/15/74
Entered in Docket RB-2/15/74
Entered in Diary For 2/15

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

- x

ORDER TO SHOW CAUSE

70 Civ. 1526 RLC

Preliminary Injunction And Temporary Restraining Order

Upon the annexed affidavit of George G. Gallantz, sworn to the 15th day of February 1974, the certificate dated February 15, 1974 of Michael A. Cardozo, pursuant to Rule 65 of the Federal Rules of Civil Procedure, the complaint filed by American Basketball Association and others in the United States District Court for the Northern District of California in an action entitled American Basketball Association, et al. v. National Basketball Association, et al. (74 Civ. 0232), and all the prior proceedings had in this action, including the filing of the complaint, the preliminary injunction issued by this Court dated May 4, 1970, plaintiffs' motion to punish defendants for contempt and the order of March 12, 1973 denying that motion, and after hearing the attorneys for the parties herein, and sufficient cause appearing therefor, it is hereby

ORDERED, that defendant American Basketball Association show cause before this Court, on February 18 1974, at 10 A M., or as soon thereafter as counsel can be

Exhibit A

heard, in Room [illegible], United States Courthouse, Foley Square, New York, New York, why this Court should not enter an order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the inherent powers of the federal courts, granting defendant National Basketball Association and its member teams a preliminary injunction enjoining and restraining defendant American Basketball Association, its member teams, their respective agents and attorneys and all persons acting in concert with them, from prosecuting in any manner the aforesaid action in the United States District Court for the Northern District of California.

AND, it further appearing to this Court from the annexed affidavit of George G. Gallantz that immediate, substantial and irreparable injury to defendant National Basketball Association and its members may occur, and this Court's jurisdiction may be undermined, if defendant American Basketball Association, its member teams, their respective agents and attorneys and all persons acting in concert with them are permitted to continue to prosecute the aforesaid California action before a decision on this application for a preliminary injunction is made, and after hearing oral argument on the application for a temporary restraining order by the attorneys for the parties herein, and upon the moving defendants posting security as fixed by this Court in the sum of $ 5,000 conditioned as required by law, it is further

ORDERED, that pending the hearing and determination of the moving defendants' motion for a preliminary injunction, defendant American Basketball Association, its member teams, their respective agents and attorneys and all persons acting in concert with them, are hereby temporarily restrained

from taking any steps in connection with, or prosecuting, the action in the United States District Court for the Northern District of California entitled American Basketball Association, et al. v. National Basketball Association, et al., (74 Civ. 0232); and it is further

ORDERED, that service of this order to show cause together with copies of the papers upon which it is made be deemed good and sufficient service if made by hand delivery as follows on or before 5:30 P.M. on February 19, 1974.

(a) On defendant American Basketball Association, by serving a copy of the same on its attorneys, Roth, Carlson & Spengler, 280 Park Avenue, New York, N. Y.;

(b) On plaintiffs, by serving a copy of the same on their attorneys, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, N. Y.;

(c) On defendants Madison Square Garden Center, Inc., Madison Square Garden Corporation and Ned Irish, by serving a copy of the same on their attorneys, Simpson Thacher & Bartlett, 1 Battery Park Plaza, New York, N. Y.; and

(d) On defendant Phoenix Professional Basketball Club, by serving a copy of the same on its attorneys, Baer & McGoldrick, 345 Park Avenue, New York, N. Y.

s/ Robert L Carter
U.S.D.J.

Issued at 5:30 P.M. on
February 15, 1974,
at New York, N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OSCAR ROBERTSON, et al.,

Plaintiffs,

-against-

NATIONAL BASKETBALL ASSOCIATION, et al.,

Defendants.

STIPULATION ADJOURNING motion + Continuing Temporary Restraining Order

70 Civ. 1526 (RLC)

Filed
Feb 27 1974
S.D. of N.Y.

MICROFILM
FEB 27 1974

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned that the motion by defendant National Basketball Association and its member teams for a preliminary injunction enjoining defendant American Basketball Association from prosecuting an action now pending in the United States District Court for the Northern District of California entitled American Basketball Association, et al. v. National Basketball Association, et al. (74 Civ. 0232), now returnable on February 28, 1974 be, and the same hereby is, adjourned to March 15, 1974 at the same time and place; and it is further

STIPULATED AND AGREED that, without prejudice to the positions of any of the ~~defendants~~ Parties, the temporary restraining order issued herein on February 15, 1974 be, and the same hereby is, extended upon the same terms and conditions to the hearing and decision in this Court upon the aforesaid motion; and it is further

STIPULATED AND AGREED that, answering papers be served no later than 5 p.m. on March 12, 1974 and reply papers, if any, be served no later than 1 p.m. on March 14, 1974.

Dated: New York, New York
February 26, 1974

WEIL, GOTSHAL & MANGES

By _____
A Member of the Firm
Attorneys for Plaintiffs,
767 Fifth Avenue,
New York, New York 10022.

SIMPSON THACHER & BARTLETT

By _____
A Member of the Firm
Attorneys for Madison Square Garden Corporation and Ned Irish,
One Battery Park Plaza,
New York, New York 10004.

PROSKAUER ROSE GOETZ & MENDELSOHN

By s/ George C. Gallatin
A Member of the Firm
Attorneys for National Basketball Association and others,
300 Park Avenue,
New York, New York 10022.

ROTH CARLSON & SPENGLER

By s/ Robert A. Carlson
A Member of the Firm
Attorneys for American Basketball Association,
280 Park Avenue,
New York, New York 10017.

SO ORDERED: February 26 1974

Robert L. Carter
U.S.D.J.

EA